IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11753 of 2004
With
SPECIAL CIVIL APPLICATION No. 15166 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

ABDUL MAJID HUSSAINBHAI MALEK - Respondent(s)

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Appearance :
SCA No.11753/04:
MR ASHISH M DAGLI for Petitioner(s) : 1,
MR PH PATHAK for Respondent(s) : 1,
SCA No.15166/04:
MR PH PATHAK for the petitioner
MR ASISH M DAGLI for the respondent.
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 11/10/2005

ORAL JUDGMENT

Special Civil Application No.11753 of 2004 has been

filed by ST Corporation challenging the legality of the award dated 5th September 2003 passed by the Labour Court, Bharuch. Special Civil Application No.15166 of 2004 has been filed by the concerned workman challenging the same award.

2. The workman was employed as a Conductor by the ST Corporation. On 16.7.1996, the bus in which the workman was discharging his duties as conductor was checked by the Checking Squad. It was found that out of 40 passengers, though 39 passengers were issued tickets, one passenger was travelling without ticket and fare for the ticket was also collected from him. It was the case of the Corporation that upon seeing the checking squad, the Conductor hurriedly tried to issue ticket. He opened the way bill for the next trip since way bill for the current trip was already closed by him. He then misbehaved with the Checking Squad and the situation came to such a pass that due to the tension created, his cash also could not be checked. For the above misconduct, a chargesheet came to be issued against the Conductor. Upon conclusion of the inquiry, the employer imposed the punishment of dismissing him from service by an order dated 13.1.97. The workman challenged his dismissal by

raising reference before the Labour Court. The Labour Court allowed the reference in part. Finding that the workman had already reached the age of superannuation in the meantime, the Labour Court provided that he shall be paid 50 per cent backwages for the intervening period i.e. from the date of dismissal till his superannuation. In the impugned award, the Labour Court observed that no attempt was made to check the cash of the Conductor. It was observed that the Conductor had not admitted the statement of the passengers and had not countersigned the same. It was observed that for an insignificant amount of Rs.1.50 ps. no person would jeopardize his service and invite economic death. Considering all these factors, the Labour Court found that the charges were not proved.

3. In my opinion, the Labour Court committed an error in coming to the said conclusions. The Labour Court noted that way bill for the next trip was already opened. The Labour Court noted that crowd had collected which prevented the officers of the Corporation from checking the cash. In that view of the matter, simply because the cash could not be checked, it could not have been concluded that the charges were not validly proved. Smallness of the amount involved can also not be a

factor to come to the conclusion whether the misconduct was actually committed or not. It may be true that the passengers were not examined during the course of inquiry. The reporter who had recorded the statements of the passengers was examined. In the decision of the Hon'ble Supreme Court in the case of Delhi Transport Corporation v. Shyam Lal, 2004 AIR SCW 4711 it was held that not examining the passengers, but recording the statement of the reporter would not amount to hearsay evidence. This aspect was reiterated in a later decision by the Hon'ble Supreme Court in the case of Divisional Controller, KSRTC v. A.T.Mane, 2004 AIR SCW 5427.

4. The Labour Court could not have ignored the evidence produced by the employer during the course of inquiry. The factors such as closing of the way bill for the current trip and opening of the way bill for the next trip, that the workman had misbehaved with the checking squad, that a crowd had collected which prevented the Squad from checking the cash of the workman, all these aspects could not have been ignored to overrule the findings of facts arrived at by the employer during the course of a domestic inquiry. To conclude that no person would commit a misconduct for a small amount which would

jeopardize his service is a conclusion based on surmise.

5. The Labour Court, therefore, ought not have interfered with the findings arrived at by the employer during the course of inquiry without there being strong rebuttal evidence. I am unable to accept the contention of the learned advocate Shri Pathak for the workman that the Labour Court having arrived at factual findings, this Court would not interfere with the same in exercise of writ jurisdiction since this Court cannot re-appreciate the evidence. In my view, the Labour Court could not have interfered with the factual findings arrived at during the course of domestic inquiry on the basis of material on record. The award of the Labour Court, therefore, cannot be sustained. The same is therefore set aside. Special Civil Application No.11753 of 2004 is therefore allowed. Rule therein is made absolute accordingly with no order as to costs. Special Civil Application No.15166 of 2004 is rejected and rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)